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OCTOBER TERM, 1949

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No. 391

391

MARION J. SLOCUM, AS GENERAL CHAIRMAN, LACKAWANNA DIVISION NO. 30 OF THE ORDER OF RAILROAD TELEGRAPHERS,

Petitioner,

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NEW YORK, AND BRIEF IN SUPPORT THEREOF

LEO J. HASSENAUER,
105 W. Adams Street,
Chicago 3, Illinois;

MANLY FLEISCHMANN,
JOHN F. DWYER,
JAMES W. SACK,
Ellicott Square Building,
Buffalo 3, New York.

INDEX

SUBJECT INDEX

	Page
Petition for a writ of certiorari to the Court of Appeals of New York, and brief in support thereof	1
The matter involved	1
Proceedings in the Courts	2
The questions presented	5
Jurisdiction	5
The reasons relied upon for the allowance of the writ	6
Brief in support of petition for certiorari	9
The Railway Labor Act precludes the exercise of jurisdiction by State Courts to interpret collective bargaining agreements in disputes between carriers and railroad labor organizations	9
The availability of a superior remedy specifically enacted by plenary legislative authority for the purpose of exercising jurisdiction over this precise type of controversy should have led to the dismissal of the present complaint.	
The New York Courts erred in failing to follow the rule of policy on this subject established by this Court in the <i>Pitney</i> case	16
Conclusion	19
Appendix	20

TABLE OF CASES CITED

<i>Bethlehem Steel Co. v. N. Y. State Labor Relations Board</i> , 330 U. S. 767	7, 12
<i>Brotherhood of Railroad Trainmen v. Texas & Pacific Ry. Co.</i> , 159 F. (2d) 822; cert. den. 332 U. S. 760	15, 16

	Page
<i>California v. Zook</i> , 336 U. S. 725	13
<i>Elgin J. & E. R. Co. v. Burley</i> , 325 U. S. 711, 725, 726	10
<i>Erie Railroad Co. v. Tompkins</i> , 304 U. S. 64	8
<i>Gen. Comm. of Adj. v. Missouri, Kansas, Texas R. Co.</i> , 320 U. S. 323	12, 13, 15
<i>Hampton, et al. v. Thompson</i> , 171 F. (2d) 535, 538	16
<i>LaCrosse Telephone Co. v. Wisconsin Employment Rel. Bd.</i> , 336 U. S. 18	7, 12
<i>Moore v. Illinois Central Railroad</i> , 312 U. S. 630	7, 12
<i>Macauley v. Waterman S. S. Corp.</i> , 327 U. S. 540, 545	18
<i>Missouri and Texas R. R. Co. v. Randolph</i> , 164 F. (2d) 4, cert. den. 334 U. S. 818	16
<i>Order of Railway Conductors v. Pitney</i> , 326 U. S. 561	6
<i>Order of Railroad Telegraphers v. Railway Express Agency</i> , 321 U. S. 342, 348; 64 Sup. Ct. Rep. 582, 586	7, 14, 17
<i>Order of Railway Conductors v. Pitney</i> , 326 U. S. 561	15
<i>Order of Railroad Telegraphers v. New Orleans, Texas and Mexico R. Co.</i> , 156 F. 2d 1; cert. den. 239 U. S. 758	15
<i>Switchmen's Union v. Nat. Mediation Board</i> , 320 U. S. 297	13
<i>Texas & N.O.R. Co. v. Brotherhood of Railway Clerks</i> , 281 U. S. 548	9
<i>Virginian Ry. Co. v. System Federation</i> , 300 U. S. 515, 553	9
<i>Washington Terminal Company v. Boswell</i> , 124 F. (2d) 235, 241, affirmed by a divided Court, 319 U. S. 732, 733	18

INDEX

iii

STATUTES CITED

Page

Railway Labor Act (48 Stat. 1185, 45 U. S. C., Sec. 151, <i>et seq.</i>)	20
Railway Labor Act and Rule 212 of the New York Civil Practice Act	4
28 U.S.C.A. Sec. 1257-(3)	5
Garrison, <i>The National Railroad Adjustment Board: A Unique Administrative Agency</i> , 46 Yale L.J. 567 (1937)	10

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NEW YORK, AND BRIEF IN SUPPORT THEREOF

To the Honorable the Chief Justice and Associate Justices of Supreme Court of the United States:

The petition of Marion J. Slocum, as General Chairman, Lackawanna Division No. 30 of The Order of Railroad Telegraphers, respectfully shows:

I

The Matter Involved

The petitioner in this case challenges the action of the Supreme Court of the State of New York in entertaining

jurisdiction to determine a controversy concerning the interpretation of a collective bargaining agreement which had been entered into by the respondent railroad and The Order of Railroad Telegraphers, a railroad labor organization, national in scope, of which the petitioner is an official. The collective bargaining agreement was entered into pursuant to the provisions of the Railway Labor Act (48 Stat. 1185; 45 U.S.C.A. 151 *et seq.*). The petitioner contends that exclusive jurisdiction to determine controversies of this type between such parties has been vested in the tribunals set up by the Act, particularly the National Railroad Adjustment Board. The questions presented are of major importance in the field of labor law.

II

Proceedings in the Courts

A dispute arose between the respondent railway and the petitioner (who hereafter will be referred to as the telegraphers organization), with respect to the interpretation of a collective bargaining agreement entered into by the parties effective January 1, 1929 (R. 396) and amended as of May 1, 1940 (R. 463). The controversy involved a claim by the telegraphers organization that certain positions in the Elmira railroad yards fell within the scope rule of its agreement. The respondent countered with the assertion that the positions were within the scope rule of an agreement entered into by the respondent and the Brotherhood of Railway Clerks on October 1, 1934, which was also subsequently extended (R. 422, 438). Pursuant to Sec. 3 (i) of the Railway Labor Act, the telegraphers organization attempted to obtain a determination of the controversy by the appropriate official of the company, as a preliminary to the submission of the controversy to the National Railroad Adjustment Board. No such determination was made.

Respondent instead commenced an action in the Supreme Court of the State of New York seeking a declaratory judgment in interpreting the two contracts in question, both organizations being made defendants. Respondent maintained that without a declaration by the court that all of the work of the employees involved came exclusively within either one of the agreements, it would be subjected to a multiplicity of claims, and that the organization of employees whose rights were not recognized would progress a claim that respondent had violated the agreement and present the dispute under the Railway Labor Act to the appropriate Division of the National Railroad Adjustment Board (R. 18, 19). Respondent further alleged it had no adequate remedy at law, and no adequate remedy before the Adjustment Board whereby it could jointly bring the claims of both organizations before the Adjustment Board. Respondent further alleged that, in the event either organization should file a submission of the dispute with the Adjustment Board, respondent could not implead or make the other organization a party thereto. (R. 20, 21)

After an unsuccessful attempt by the telegraphers to remove the cause to the United States District Court, the case was tried before a justice of the Supreme Court at an equity term without a jury. The trial court denied both defendants' motions to dismiss the case (R. 176), and granted judgment in favor of respondent, interpreting both collective bargaining agreements in the manner requested by it. (R. 338)

In the course of a preliminary opinion upholding the jurisdiction of the State Court, the trial justice wrote:

"The controversy arose out of work performed at Elmira and . . . there seems to be no reason why the plaintiff should be compelled to go to the National Railroad Adjustment Board at Chicago with the at-

tendant delays, especially in view of the fact that it is questionable if the relief there afforded is adequate. The condition of the court calendar here, where the controversy arose, is such that the case can be disposed of expeditiously and at the convenience of the respective parties, affording full, adequate and prompt relief." (R. 34, 36, 37)

—The Court of Appeals quoted with approval this part of the trial court's opinion (R. 520).

Parenthetically, the clerks organization throughout the litigation joined the telegraphers in challenging the jurisdiction of the State courts, even though the decision of the trial court was favorable to its position as to the merits of the controversy. No appeal was taken by the clerks from the judgment of the trial court, and they are no longer parties to this litigation.

Thereafter, the telegraphers appealed to the Appellate Division of the Supreme Court, Third Department, which unanimously affirmed the judgment of the trial court. Pursuant to New York statute, application was then made to the Appellate Division for leave to appeal to the Court of Appeals. This was denied. Application for the same relief was thereupon made to the Court of Appeals and permission was granted by that Court (R. 395). Upon the appeal, the judgment was affirmed by a divided court. Five judges held that the state courts had concurrent jurisdiction to determine such a controversy, and two judges were of the opinion that such jurisdiction was exclusively vested in the National Railroad Adjustment Board. The opinions of the Court of Appeals will be found at R. 504. The applicable provisions of the Railway Labor Act and Rule 212 of the New York Civil Practice Act, governing actions for declaratory judgments, are set forth in an appendix to the brief submitted with this petition.

III

The Questions Presented

1. Whether Congress left to State and Federal courts power to exercise concurrent jurisdiction with the National Railroad Adjustment Board in determining disputes between an organization of employees and a carrier growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions?

2. As a corollary to the question just stated, whether this Court intended, in *Order of Railway Conductors v. Pitney* 326 U. S. 561, to limit the doctrine established in *Moore v. Illinois Central R. Co.*, 312 U. S. 630?

3. Is not a State court required to follow the public policy of the Railway Labor Act as interpreted by this Court, by refusing to entertain jurisdiction in any case until the matter has first been submitted to the National Railroad Adjustment Board?

4. Does the present complaint state a proper cause of action for declaratory judgment when it is affirmatively alleged that no application for relief was made by the respondent carrier or by either of the organizations of employees to the National Railroad Adjustment Board?

5. Whether the interpretation of the respective collective bargaining agreements by the state court is binding on the National Railroad Adjustment Board?

IV

Jurisdiction

The jurisdiction of this Court is based upon title 28 U.S.C.A. Sec. 1257-(3). The judgment of the Court of

Appeals was entered on July 19, 1949, and the judgment of the Supreme Court of the State of New York making the judgment of the Court of Appeals the final judgment in the case, was entered on the 9th day of August, 1949.

V

The Reasons Relied Upon For the Allowance of the Writ

1. The question presented with reference to the exclusive jurisdiction of the National Railroad Adjustment Board to interpret collective bargaining agreements between carriers and railroad labor organizations is one which has not been squarely passed upon by this Court. The importance of this question in the administration of the Railway Labor Act, and in the day-to-day working relations between carriers and labor organizations can hardly be overemphasized. The public considerations involved are stressed in both the prevailing and dissenting opinions of the Court of Appeals.

2. The decision in the present case is in conflict with the decision of this Court in *Order of Railway Conductors v. Pitney*, 326 U. S. 561. It was there held that Section 3 of the Railway Labor Act requires the courts to refuse jurisdiction of this type of controversy prior to submission to the National Railroad Adjustment Board.

Judge Desmond, in his dissenting opinion, points out that the state courts are bound by the public policy of a federal statute as interpreted by this Court. He concludes that the case should have been dismissed because the acceptance of jurisdiction violated a national policy as declared by this Court in the *Pitney* case. He, therefore, found it unnecessary to distinguish between "want of jurisdiction" and "abuse of discretion" in reaching his determination. In that view of the matter, which we submit to be correct, the case presents important and far-reaching

questions of the relation between the Federal and State judiciaries in a field of Federal cognizance.

3. Because of the claimed conflict between the *Pitney* case and earlier case of *Moore v. Illinois Central Railroad*, 312 U. S. 630, it is respectfully submitted that the subject is one which urgently requires clarification by this tribunal.

It is the contention of the petitioner that the rule enunciated in the *Moore* case was intended to apply only to that particular type of controversy, which this Court correctly described in *Order of Railroad Telegraphers v. Railway Express Agency*, 321 U. S. 342, 348; 64 Sup. Ct. Rep. 582, 586, as being a "common-law action to recover wages."

4. The decision of the Court of Appeals conflicts with the decisions of this Court in *Bethlehem Steel Co. v. N.Y. State Labor Relations Board*, 330 U. S. 767, and *LaCrosse Telephone Co. v. Wisconsin Employ. Rel. Bd.*, 336 U. S. 18.

It was there held that where the Federal Authority has occupied the field, the right of the state to legislate in the same field is suspended. It is submitted by the petitioner that the same principle applies to action by state courts in a field occupied by tribunals created by federal enactment.

The respondent carrier is concededly engaged in interstate commerce. The industry is one over which the Railway Labor Act and the several Boards created thereunder has consistently exercised jurisdiction.

5. This is the first occasion that there has been presented to this Court the question of the concurrent jurisdiction of state courts with that of the National Railroad Adjustment Board to consider disputes growing out of the interpretation or application of agreements promulgated under the Railway Labor Act and this important question should be passed upon by this Court.

6. The practical result of the decision to be reviewed will necessarily be to confuse the problem of stabilizing industrial relations in the field of railroad labor. It is very clear that the decision would have been quite to the contrary if the original action for a declaratory judgment had been commenced in the United States District Court, since presumably that Court would have followed the rule of policy established in the *Pitney* case. If the decision be correct, the congressional policy to vest original jurisdiction with the National Railroad Adjustment Board may thus be set at naught by either a carrier or a labor organization. It may confidently be predicted that one interpretation of an agreement will be reached by one tribunal and a contrary interpretation by another. Thus, the very wrongs which the framers of the Act intended to remedy would be continued and a consistent application of the rules and working conditions of such agreements would become impossible.

There is here presented a situation analogous to that which prevailed in a broader area of jurisprudence prior to the decision of this court in *Erie Railroad Co. v. Tompkins*, 304 U. S. 64. It is submitted, therefore, that these practical considerations with respect to the operation of the Railway Labor Act imperatively require a review of the decision below by this Court.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued to review the judgment of the Court of Appeals of the State of New York, in this action.

LEO J. HASSENAUER,
MANLY FLEISCHMANN,
JOHN F. DWYER,
JAMES W. SACK,

Counsel for petitioner.

Dated: October 14, 1949.

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BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

I

The Railway Labor Act Precludes the Exercise of Jurisdiction by State Courts to Interpret Collective Bargaining Agreements In Disputes Between Carriers and Railroad Labor Organizations

The validity of the Railway Labor Act, which established tribunals and procedures for the prompt determination of labor disputes involving interstate rail carriers, is beyond dispute. This Court has repeatedly upheld these provisions under the constitutional power of Congress to regulate interstate commerce.

Texas & N.O.R. Co. v. Brotherhood of Railway Clerks,
281 U. S. 548;

Virginian Ry. Co. v. System Federation, 300 U. S.
515, 553.

One of the main purposes of the 1934 amendments was to provide a more effective process of settlement. *Elgin J. & E. R. Co. v. Burley*, 325 U. S. 711, 725, 726. This appears clearly both from the structure and language of the Act, and from a consideration of the background of its enactment.

The 1934 amendments incorporated in the present Act were designed to provide a general and inclusive plan for the settlement of *all* railway labor disputes, to quote the specific language of Sec. 2, "General Purposes." The aim was not to dispense with voluntary agreements and settlements between disputing parties, but rather to provide agencies and tribunals for resolving disputes which could not be otherwise determined without prolonged industrial strife. A most important objective of the 1934 amendments was that of attaining uniformity in the interpretation and administration of the law with respect to collective bargaining agreements and the respective rights of carriers and employees, which was only possible by voluntary agreement under the Act of 1926.¹ This uniformity was intended to extend to the promulgation of agreements, the creation of tribunals for interpretation of such agreements, and to the procedure for the resolution of controversies arising under them. Separate tribunals were therefore provided which, it was expected, would be peculiarly fitted to deal with the specific controversies committed to their respective jurisdictions. The plan of the Act in this respect is as follows:

The National Railroad Adjustment Board has general jurisdiction over disputes growing out of grievances, or out of interpretation or application of agreements concerning rates of pay, rules, or working conditions. The

¹ Garrison, *The National Railroad Adjustment Board: A Unique Administrative Agency*, 46 Yale L.J. 567 (1937).

Board consists of thirty-six members, eighteen selected by the carriers and eighteen selected by labor organizations of the employees, national in scope, organized in accordance with the provisions of the Act. The Board is divided into four divisions, and it is important to note that a single division, viz., the Third Division, has jurisdiction over both telegraphers and clerical employees (Sec. 3 (h)). The contention of the respondent that it might be subjected to conflicting awards is thus without merit.

The Act further specifies a complete procedure for the handling of claims of this type. The first step in the administrative procedure is the referral of the complaint through normal channels to the chief operating officer of the carrier (Sec. 3 (i)), that being the exact procedure initiated by the petitioner before the commencement of the present action. (R. 358, 361, 365, 366, 368, 374, 376, 377, 378, 379, 381, 382.) If adjustment is not reached in this phase of the procedure, either party may refer the matter to the appropriate division of the Adjustment Board. Awards of the Adjustment Board may be enforced by appropriate action in the United States District Court (Sec. 3 (p)).

The second major tribunal created by the Act is the National Mediation Board (Secs. 4, 6). A principal function of this Board is the mediation, adjustment and, if necessary, the determination of representation cases, i.e., jurisdiction disputes between unions and carriers.

It may be pointed out in passing that it is frequently difficult to determine exactly which type of controversy is involved in a particular case, since a single dispute may involve questions of interpretation or application of contracts as well as questions of policy with respect to representation. Such problems will be found to be implicit in

the present case. See Pg. 314 of the Record where it is pointed out that the present controversy is basically a jurisdictional dispute, not justiciable in a court of law. This Court has flatly held that such disputes are not within the jurisdiction of any court. *General Committee, etc., v. M.K.T. R. Co.*, 320 U. S. 323.

Applying the usual rules of interpretation applied to federal legislation under the commerce clause by this Court, it would seem clear that the jurisdiction of the statutory administrative tribunals was intended to be exclusive. *Bethlehem Steel Co. v. N.Y. State Labor Rel. Bd.*, 330 U. S. 767; *LaCrosse Telephone Co. v. Wisconsin Employment Rel. Bd.*, 336 U. S. 18. Before proceeding to a discussion of the particular case relied upon by the respondent and by the courts below as establishing a contrary rule (*Moore v. Illinois Central R. Co.*, 312 U. S. 630), we call attention to a few of the factors which seem to indicate that Congress certainly intended the jurisdiction conferred upon these tribunals, to be exclusive in a controversy such as is here considered.

In the first place, the history of the Act, and the purposes expressed in Sec. 2 seem to be conclusive on this subject. As was said by this Court in *General Committee, etc., v. M.K.T.R. Co.*, supra, at page 337, in considering whether one particular type of controversy cognizable under the Act could be determined in a court of law:

"In view of the pattern of this legislation and its history the command of the Act should be explicit and the purpose to afford a judicial remedy plain before an obligation enforceable in the courts should be implied. Unless that test is met the assumption must be that Congress fashioned a remedy available only in other tribunals."

To the same effect, see

General Committee v. Southern Pacific R. Co., 320 U. S. 338;

Switchmen's Union v. Nat. Mediation Board, 320 U. S. 297.

It has been noted that one of the "General Purposes" of the Act, Sec. 2 (5), is to provide for the "prompt and orderly settlement of *all* disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions." (Italics supplied.) It is certain that the Congressional purpose will be seriously impaired if a carrier or union is left free to decide whether it will accept the statutory provisions for "prompt and orderly settlement," or will embark upon an expensive and protracted litigation in the state courts, such as the present five-year proceeding.

The uniform course of decisions in this Court establishes the principle that when Congress "occupies the field" in an area of federal jurisdiction, the authority of the state legislative and judicial bodies is terminated. This well-established doctrine is particularly applicable to the field of labor relations.

The latest expression by this Court on this general subject may be found in *California v. Zook*, 336 U. S. 725. There, the question was as to the right of a State to legislate in a field occupied by Congress. The general test formulated was this:

"But whether Congress has or has not expressed itself, the fundamental inquiry, broadly stated, is the same: does the State action conflict with national policy?"

It seems clear that the same test must be applied when the problem involved is one of possible conflict in the area

of federal and state adjudication. It is self-evident that the exercise of jurisdiction by the state courts in railway labor disputes does in fact conflict with the national policy as stated by Congress, i.e., "to provide for the prompt and orderly settlement of all disputes . . ." (Sec. 2).

Uniformity of interpretation of the language contained in agreements can only be attained by adherence to the Adjustment Board procedure. The factual questions presented are invariably intricate and technical, requiring the consideration of men informed by experience.

An examination of a few of the difficulties encountered in the present case by Court and counsel by reason of the technical jargon employed indicates clearly why Congress decided to entrust such controversies to expert tribunals. (R. 135, 144, 145).

The factors just considered would seem to demonstrate conclusively that concurrent jurisdiction by the courts and the administrative tribunal in cases of this kind, is contrary to the legislative intent as interpreted by this Court in a variety of similar cases. Does the holding of this Court in *Moore v. Illinois Central R. Co.*, supra, require a different result in the present case?

The courts below apparently reached that conclusion in holding that the rule stated in the *Moore* case was intended by this Court ~~to apply to all types of controversy~~ which might arise under agreements promulgated under the Railway Labor Act. However, later decisions of this Court, in the same field, have made it abundantly clear that the doctrine of the *Moore* case will be limited to the particular type of controversy there considered, viz., a "common law action to recover wages," as it was described in *Order of Railroad Telegraphers v. Railway Express Agency*, 321 U. S. 342.

No case in this Court can be cited in which a carrier or labor organization was permitted to seek a judicial inter-

pretation of a collective bargaining agreement before submission to the Adjustment Board.

On the contrary, in other cases involving controversies under the Railway Labor Act, this Court has regularly remanded the litigants to the administrative remedies under the Act, either as a matter of law, or in the exercise of sound judicial discretion. The most informative cases in this respect are *Gen. Comm. of Adj. v. Missouri, Kansas, Texas R. Co.*, 320 U.S. 323, and *Order of Railway Conductors v. Pitney*, 326 U. S. 561.

The limited effect of the *Moore* case is made very clear by the decision in the *Pitney* case. There, the plaintiff organizations representing certain employees of a bankrupt railroad, sought to have the Federal District Court issue an injunction restraining an alleged violation of the Railway Labor Act. In order to determine the merits of the controversy, it was necessary for the Court to interpret the collective bargaining agreements between the carrier and two organizations as here. The District Court interpreted the agreements, and dismissed the petition on the merits. On appeal, the Circuit Court held that the petition should have been dismissed on jurisdictional grounds, because the remedies of the Railway Labor Act for the settlement of such disputes were exclusive. This Court upheld the decision of the Circuit Court with respect to denying jurisdiction to the District Court to pass upon the question presented.

Since the decision in the case just cited, the federal courts have regularly refused jurisdiction of such disputes, either as a matter of law or in the exercise of judicial discretion and have remitted the parties to the appropriate administrative procedure. See for example, *Order of Railroad Telegraphers v. New Orleans, Texas and Mexico R. Co.*, 156 F. 2d 1; cert. den. 239 U. S. 758, *Brotherhood of Railroad Trainmen v. Texas & Pacific Ry. Co.*, 159 F. (2d), 822; cert.

den. 332 U. S. 760; *Missouri, Kansas and Texas R. R. Co. v. Randolph*, 164 F. (2d) 4, cert. den. 334 U. S. 818; *Hampton, et al v. Thompson*, 171 F. (2d) 535, 538.

II

The Availability of a Superior Remedy Specifically Enacted by Plenary Legislative Authority for the Purpose of Exercising Jurisdiction Over This Precise Type of Controversy Should Have Led to the Dismissal of the Present Complaint. The New York Courts Erred in Failing to Follow the Rule of Policy on This Subject Established by This Court in the Pitney Case.

Much that has been said in the argument under Point I is relevant to this point. The jurisdiction of the Adjustment Board is patent beyond dispute; in fact, the present controversy is almost a prototype of the kind of case that is heard by the several Divisions every day. This tribunal is recognized by carriers and labor unions alike as the appropriate forum for the prompt and expert settlement of such controversies. The respondent itself is no stranger to this tribunal. The Twelfth annual report of the National Mediation Board shows that the respondent carrier was a party to seventeen cases before the Adjustment Board in the year 1945-46; the Thirteenth annual report shows that it participated in twenty-six such cases in 1946-47; and the Fourteenth annual report shows it appearing in seventeen cases in 1947-48. The same reports show that respondent has appeared in eighty-three separate cases before the Third Division of this Board during the past seven years. If respondent has now decided that the administrative remedy is slow, uncertain and unreliable, its discovery of these defects, which it now urges with such vigor, has been belated.

The respondent and the courts below made much of the supposed speed with which matters of this kind could be disposed of in the state courts as compared with the Railroad Adjustment Board. A glance at the history of this "hoary litigation" (Cf. *The Order of Railroad Telegraphers v. Railway Express Agency*, 321 U. S. 342) is the best answer to this contention. The case was started in 1944, after five years of protracted delay on the part of the respondent in making the necessary determination which would have permitted the union to invoke the administrative remedy.

On the other hand, the normal procedure before the Third Division of the Adjustment Board is most expeditious. (See Fourteenth Annual Report of the National Mediation Board). It is abundantly clear that if respondent had complied with its statutory duty by deciding the union's grievances promptly, the present controversy would have been promptly and long since finally determined by the Adjustment Board.

On the other hand, the Adjustment Board is made up exclusively of practical railroad men drawn equally from management and labor. These men are informed by experience and have a complete familiarity with such controversies, which they hear every day, and they need no glossary to guide them through the mazes of railroad shorthand. In such a case, a pinch of experience is worth a pound of logic.

The considerations of public policy which found expression in the congressional creation of these highly specialized tribunals under the Railway Labor Act have been well summarized by the Circuit Court of Appeals for the District of Columbia (per Rutledge, J.) in *Washington Terminal Com-*

pány v. Boswell, 124 F. (2d) 235, 241, affirmed by a divided Court, 319 U. S. 732, 733.² We quote from that opinion:

"The whole adjustment procedure up to the point of award, findings and order by the Board, appears to be constructed upon the idea that it is not the business of the lawyers, but is the business of railroad men, workers and managers alike. That does not make their findings and decisions less probative; rather it should make them more so. They know the language, functions and purposes of railroads and of their collective agreements. This judgment is informed by experience in negotiating and administering these contracts. Because of this they, perhaps better than lawyers, are qualified to interpret and apply them."

When these considerations are applied to the case at bar, the result seems clear. The reasons which have impelled the federal courts, without exception, to refuse jurisdiction in this type of controversy, do not disappear by reason of respondent's ingenuity in filing in the state courts.

An essential condition precedent to the granting of a declaratory judgment is lacking when the statutory remedy available is not only adequate but clearly superior. In such a case, the parties will be required to exhaust the administrative procedure before seeking relief in the courts.

Macauley v. Waterman S. S. Corp., 327 U. S. 540, 545.

Especially must this be true when the alternative remedy available is a statutory procedure specifically designed for the exact type of controversy by the paramount legislative authority in the field.

In holding otherwise, the Court of Appeals adopted a rule of judicial policy contrary to that enunciated by this

² It will be noted that this Court upon the argument in the *Boswell* case requested the Solicitor General to file a brief on the jurisdiction of the courts "either before or after submission of the dispute to the Board"—a clear indication that this Court did not consider this question foreclosed by the *Moore* case. (63 Sup. Ct. Rep. 198)

Court in a field where the decisions of this tribunal have universally been considered to be controlling:

"But on a question of statutory construction of the act of Congress which has been determined by the Supreme Court of the United States, subsequently arising in this court, we should feel bound to adopt and follow the construction of the tribunal on the principle of comity, although in a case where the ultimate jurisdiction is vested in this court. This principle is especially important to be observed in such a case, in view of the relation between the Federal and state courts, not exercising, in all cases, a co-ordinate jurisdiction, but engaged in the administration of justice to a great extent between persons who are citizens both of a state and of the United States. The decisions of the tribunals of a state as to the true construction of the statutes of its own sovereignty are followed by the Federal courts, and it would be most unseemly and produce great confusion if state courts should refuse to adopt the construction of the Supreme Court of the United States, of Federal statutes." *York v. Conde*, 147 N. Y. 486, writ of error dismissed 168 U. S. 642.

Conclusion

The petition for Certiorari should be granted in order that this Court may review the judgment of the Court of Appeals, State of New York, in this case.

Respectfully submitted,

LEO J. HASSENAUER,
MANLY FLEISCHMANN,
JOHN F. DWYER,
JAMES W. SACK,

*Attorneys for Marion J. Slocum,
Petitioner.*

APPENDIX

The pertinent provisions of the Railway Labor Act (48 Stat. 1185, 45 U. S. C., Sec. 151, *et seq.*) are as follows:

GENERAL PURPOSES

"Sec. 2. The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; * * * (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation of application of agreements covering rates of pay, rules, or working conditions.

GENERAL DUTIES

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

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Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or car-

riers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: PROVIDED, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: AND PROVIDED FURTHER, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh. No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

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NATIONAL BOARD OF ADJUSTMENT—GRIEVANCES—
INTERPRETATION OF AGREEMENTS

Sec. 3. First. There is hereby established a Board, to be known as the 'National Railroad Adjustment Board', the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act.

(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees or through an officer or officers designated for that purpose by such board, trustee or trustees or receiver or receivers, shall prescribe the rules under which its rep-

representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one representative on any division of the Board.

(c) The national labor organizations, as defined in paragraph, (a) of this section acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one representative on any division of the Board.

(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after the passage of this Act, in case of any original appointment to office of a member of the Adjustment Board, or in case of a vacancy in any such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, which ever he is to represent.

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

Third Division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

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(i) THE DISPUTES between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, SHALL BE HANDLED IN THE USUAL MANNER UP TO AND INCLUDING THE CHIEF OPERATING OFFICER OF THE CARRIER DESIGNATED TO HANDLE SUCH DISPUTES; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes. (*Italics supplied.*)

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(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall ~~forthwith agree upon~~ and select a neutral person, to be known as 'referee', to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a

member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this Act for the appointment of arbitrators and shall fix and pay the compensation of such referees.

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(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.

(q) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

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NATIONAL MEDIATION BOARD

Sec. 4. First. The Board of Mediation is hereby abolished, effective thirty days from the approval of this Act and the members, secretary, officers, assistants, employees, and agents thereof, in office upon the date of the approval of this Act, shall continue to function and receive their salaries for a period of thirty days from such date in the same manner as though this Act had not been passed. There is hereby established, as an independent agency in the executive branch of the Government, a board to be known as the 'National Mediation Board', to be composed of three members appointed by the President, by and with the advice and consent of the Senate, not more than two of whom shall be of the same political party. * * * No person in the employment of or who is pecuniarily or otherwise interested in any organization of employees or any carrier shall enter upon the duties of or continue to be a member of the Board.

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FUNCTIONS OF MEDIATION BOARD

Sec. 5. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such con-

troversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

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Second. In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this Act. EITHER PARTY TO THE SAID AGREEMENT, OR BOTH, MAY APPLY TO THE MEDIATION BOARD FOR AN INTERPRETATION OF THE MEANING OR APPLICATION OF SUCH AGREEMENT. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days. (*Italics supplied.*)

Sec. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without re-

quest for or proffer of the services of the Mediation Board.

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NEW YORK STATE RULES OF CIVIL PRACTICE

Rule 212. *Jurisdiction discretionary.* If, in the opinion of the court, the parties should be left to relief by existing forms of actions, or for other reasons, it may decline to pronounce a declaratory judgment, stating the grounds on which its discretion is so exercised.

(4733)